

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 22-cv-21714-CMA**

BRIAN GALLANT,
individually and on behalf of all others similarly situated,

Plaintiff,

v.

TD BANK, N.A., and
EARLY WARNING SERVICES, LLC,

Defendants.

_____ /

UNOPPOSED MOTION FOR EXTENSION OF TIME

Defendant Early Warning Services, LLC (“EWS”) by and through the undersigned hereby respectfully moves this Court for a 21-day extension to respond to the First Amended Class Action Complaint (“Amended Complaint”) (Dkt. No. 21) filed by Plaintiff Brian Gallant (“Plaintiff”) and in support states as follows:

1. Plaintiff initially filed this action on April 13, 2022 in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, naming TD Bank, N.A. (“TD Bank”) as the sole defendant and asserting claims against TD Bank on behalf of himself and a nationwide class and Florida subclass of TD Bank accountholders for (1) purported violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.201, et seq; (2) breach of contract including the covenant of good faith and fair dealing; and (3) unjust enrichment.
2. TD Bank removed the action to this Court on June 3, 2022.
3. On July 11, 2022, Plaintiff filed the Amended Complaint (Dkt. No. 21), in which Plaintiff adds EWS as a defendant to the three claims asserted in the original Complaint,

excludes TD Bank from the FDUTPA claim, and adds a claim against TD Bank only for negligent misrepresentation.

4. EWS was served with the summons and Amended Complaint on July 25, 2022 and its deadline to respond is currently August 15, 2022.
5. This Court entered an Order on July 21, 2022 directing TD Bank to “not file a response to the Amended Complaint within the time it is required to do so” and instead ordering that “both Defendants shall file a combined response or separate answers to the Amended Complaint by the deadline [EWS] has to serve a response.” (Dkt. No. 27.)
6. EWS respectfully requests an additional 21 days to respond to the Amended Complaint, and that its response be due on or before September 6, 2022 (as September 5, 2022 is Labor Day). EWS requests this additional time in order to investigate the factual allegations of the Amended Complaint and to meet and confer with Plaintiff’s counsel in an effort to avoid an anticipated motion to dismiss.
7. Counsel for EWS has met and conferred with counsel for Plaintiff and counsel for TD Bank. No party opposes EWS’s request for a brief extension. Notwithstanding the extension request as to EWS, counsel for TD Bank have authorized EWS to state that TD Bank is prepared to file its response to the Amended Complaint by the existing August 15, 2022 deadline, and to limit its motion to 15 pages.
8. EWS and TD Bank respectfully request permission to file separate responses to Plaintiff’s Amended Complaint, given the nature of the claims against the two defendants. Plaintiff’s alleged enrollment in and use of Zelle is tied to his deposit account relationship with TD Bank. Plaintiff does not have a direct contractual relationship with EWS and EWS did not charge Plaintiff (or any other Zelle user) any

fees in connection with transactions using Zelle. In addition, Plaintiff's Amended Complaint includes a claim for negligent misrepresentation that is only asserted against TD Bank and not EWS, as well as a FDUTPA claim that is only asserted against EWS and not TD Bank. Accordingly, because EWS and TD Bank are differently situated in terms of the legal claims and factual allegations asserted against them, EWS and TD Bank respectfully request permission to file separate, independent responses to the Amended Complaint. Counsel for Plaintiff does not oppose this request.

9. In the alternative, if the Court requires EWS and TD Bank to file a single consolidated motion to dismiss, EWS and TD Bank respectfully request a 10-page enlargement to the page limitation on the motion to dismiss to allow each defendant adequate opportunity to raise their separate defenses and arguments as appropriate.

WHEREFORE, EWS, by and through the undersigned counsel, respectfully requests that this Court grant the Motion and extend the deadline for EWS to respond to the Amended Complaint by 21 days up to and including September 6, 2022 and to permit EWS and TD Bank to file separate responses to the Amended Complaint (with TD Bank's response, limited to 15 pages, due August 15, 2022). A proposed order is submitted with this Motion.

S.D. Fla. L.R. 7.1(A)(3) CERTIFICATE OF CONFERENCE

I, Alisa Taormina, Esq., hereby certify that counsel for EWS conferred with counsel for Plaintiff and counsel for TD Bank on August 4, 2022, via email, regarding the requested relief and is authorized to represent that the none of the Parties object to the relief sought.

Dated: August 4, 2022

By: /s/ Alisa M. Taormina

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF Notification to all parties and notification of such filing to all CM/ECF participants in this case on the 4th day of August, 2022.

By: /s/Alisa M. Taormina
Alisa M. Taormina, Esq